

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Power Company :  
-vs- :  
Illinois Valley Electric :  
Cooperative : 88-0276  
:   
Complaint under Electric Supplier:  
Act regarding service in La Salle:  
County, Illinois. :

ORDER AUTHORIZING TEMPORARY ELECTRIC SERVICE

By the Commission:

On September 14, 1988, Illinois Power Company ("Illinois Power" or "Complainant") filed a Complaint with the Illinois Commerce Commission ("Commission") against Illinois Valley Electric Cooperative ("IVEC" or "Respondent") seeking the exclusive right to provide electric service to Unimin Mining Company ("Unimin") in Troy Grove, La Salle County, Illinois.

On March 3, 1989, Illinois Power filed a Motion for Temporary Authority to Furnish Electric Service to provide all of Unimin's electrical requirements. IVEC filed a Motion to Furnish Temporary Electrical Service to the new mining operation of Unimin located solely within IVEC's service area on March 17, 1989. Despite the Hearing Examiner's urging that the parties, in the interest of time and expense, agree between themselves that one of them provide temporary service with the understanding that the agreement would be without prejudice to any issue raised regarding the right of either electric supplier to provide permanent service to Unimin, no agreement was reached.

On April 12, 1989, a hearing was held to take evidence on the issue of temporary service to Unimin. Illinois Power's service area engineering supervisor for the La Salle service area testified on behalf of Complainant. The manager of IVEC and the plant manager for Unimin testified on behalf of IVEC.

The Hearing Examiner's Proposed Order Authorizing Temporary Electric Service was mailed by the Commission's Chief Clerk to all persons whose names appeared on the service list maintained for this docket under a cover letter dated May 16, 1989. Exceptions of Illinois Power Company to Hearing Examiner's Proposed Order were filed May 31, 1989, and Reply to Exceptions of Illinois Power Company to Hearing Examiner's Proposed Order for Temporary Electric Service was filed on behalf of Illinois Valley Electric Cooperative, Inc. on June 7, 1989. The Exceptions and Reply to Exceptions have been considered.

The record shows that the parties entered into a Service Area Agreement dated October 21, 1970, which was approved by the Commission in Docket No. ESA 136 on April 7, 1971, and by Joint Petition the Agreement was amended by the parties and approved by Commission Supplemental Orders thereafter. The Agreement delineates the territory to be served by the respective parties in Troy Grove and Dimmick Townships, La Salle County, Illinois.

Unimin operates a silica sand mining and processing business in parts of Troy Grove and Dimmick Townships, La Salle County, Illinois. Adjacent to the Unimin facility is Illinois Power's 34.5 KV transmission line. Under the Agreement, Illinois Power is authorized to serve in an area designated as the Large Line Corridor ("Corridor") which is a corridor being one quarter mile on either side of Complainant's 34.5 KV transmission line. Territory outside of the Corridor is generally to be served by IVEC pursuant to the Agreement.

The Unimin operation consists of a processing facility and open pit mining operations conducted at locations remote from the processing facility. Between 1963 and 1984, all of Unimin's processing and mining operations were conducted within the Corridor. Illinois Power, during that time, served Unimin through a customer substation located approximately 200 feet south and east of the 34.5 KV transmission line. This substation is located within the Corridor. From that substation, Unimin transported the electricity received from Complainant to its remote mining operations by a private customer distribution network. The private distribution network transported the electricity to the Unimin mine pits which were, at that time, all located in the Corridor.

Unimin proposes to open a New Pit No. 1 with electric service required for that mine pit immediately and a New Pit No. 2 with a need for electric service in June, 1989, sufficient to allow construction of the pit and sufficient for operation of the pit in 1990. Both of these pits are located outside the Corridor and in IVEC's territory. Electric service to Unimin's Center and East Pits is currently being provided by Illinois Power with the point of delivery of such electric service being at the Unimin customer substation located in the Corridor and then transported by Unimin's private distribution system to the Center and East Pits. The private distribution lines extend outside of the Corridor into the territory to be served by IVEC.

Unimin requested that IVEC establish a point of delivery for electric service in IVEC's territory sufficient to serve New Pit No. 1 and New Pit No. 2. IVEC constructed a 3,000 KW substation in IVEC's territory approximately 300 feet from the New Pit No. 1 and approximately 2,600 feet from the New Pit No. 2. Unimin

plans to construct a distribution line from the IVEC point of delivery to the New Pit No. 1 and the New Pit No. 2.

In order to provide adequate electric service to New Pit No. 1, a 600 KW substation would have to be constructed by either Illinois Power or Respondent. In addition, a tie line would have to be constructed by both electric suppliers tapping the Illinois Power 34.5 KV transmission line at the same location and extending approximately 1,500 feet to the location of the new substation. These distances and points of construction for the substation would be approximately the same for both IVEC and Illinois Power. In addition, the cost of constructing a 600 KW substation and the 1,500 of tie line would be the same for both electric suppliers.

IVEC has constructed a 3,000 KW substation in its territory. The substation size is to enable Respondent to provide adequate service for Unimin's New Pit No. 1 and additional mining pits currently in operation or anticipated to be in operation by Unimin and located in IVEC's territory as well as to provide for the electrical needs of other customers located in IVEC's territory.

The record also shows that to provide power to the new substation, IVEC was required to construct 3,400 feet of tie line at a cost greater than the cost would have been for the 1,500 feet of tie line. This additional cost was incurred by IVEC directly as a result of Illinois Power's denial of IVEC's request to tap Illinois Power's 34.5 KV transmission line for purposes of providing electricity to the new IVEC substation.

The distance from Illinois Power's customer substation to the New Pit No. 1 is approximately 3,000 feet and to the New Pit No. 2 approximately 4,400 feet. The Unimin Center Pit is approximately 3,600 feet from the Illinois Power customer substation and the Unimin East Pit is approximately 2,600 feet from the Illinois Power customer substation.

Section 8 of the Illinois Electric Supplier Act provides that the Commission "may issue a temporary authorization to a supplier permitting the making of extensions and furnishing of service while the dispute is pending." The issue of temporary authority is rarely litigated. Typically, parties agree to or acquiesce in temporary service and go forward to contest permanent service issues. The standards to apply to determine temporary authority are neither spelled out in the statute nor do they appear in any cases.

The record shows that the cost of providing adequate electric service for the Unimin mining operation is approximately

the same for Illinois Power and IVEC. The mining operations of Unimin are all located within the territory agreed by Illinois Power and IVEC to be in IVEC's territory. Unimin does not have adequate private distribution facilities for providing electric service to New Pit No. 1 and New Pit No. 2. Unimin needs electric service to New Pit No. 1 immediately and to New Pit No. 2 by June, 1989.

The Commission is of the opinion that the proper criteria for determining temporary electric service is which of the competing electric suppliers can lawfully provide electric service in the most expeditious and economical manner. It appears to the Commission, at this point in the proceeding, that New Pit No. 1 and New Pit No. 2 are located in the territory delineated in the Commission approved Service Area Agreement as the territory of IVEC. Therefore, IVEC appears to be the only electric supplier lawfully entitled to provide temporary electric service to the new mine sites.

The Commission, having considered the record for the purpose of authorizing temporary electric service and being fully advised in the premises, is of the opinion and finds that:

- (1) Illinois Power is an electric utility within the meaning of the Illinois Public Utilities Act and is an electric supplier within the meaning of the Illinois Electric Supplier Act;
- (2) IVEC is an electric cooperative and is an electric supplier within the meaning of the Illinois Electric Supplier Act;
- (3) the Commission has jurisdiction over the parties hereto and of the subject matter hereof;
- (4) the statements of fact set forth in the prefatory portion of this Order are supported by the evidence and the record and are hereby adopted as findings of fact;
- (5) the criteria for determining temporary electric service is which of the competing electric suppliers can lawfully provide electric service in the most expeditious and economical manner;
- (6) since New Pit No. 1 and New Pit No. 2 are located in the territory delineated in the Commission approved Service Area Agreement between the parties as the territory of IVEC, IVEC appears to be the only electric supplier lawfully entitled to provide temporary

electric service to Unimin's New Pit No. 1 and New Pit No. 2;

- (7) IVEC's Motion to Furnish Temporary Electrical Service should be granted;
- (8) Illinois Power's Motion for Temporary Authority to Furnish Electric Service should be denied.

IT IS THEREFORE ORDERED that Illinois Valley Electric Cooperative's Motion to Furnish Temporary Electrical Service be, and it is hereby, granted, and IVEC is hereby granted temporary authority to provide electric service to Unimin for all of its requirements at New Pit No. 1 and New Pit No. 2 in La Salle County, Illinois.

IT IS FURTHER ORDERED that Illinois Power Company's Motion for Temporary Authority to Furnish Electric Service be, and it is hereby, denied.

IT IS FURTHER ORDERED that Illinois Power be, and it is hereby, barred from providing temporary service to Unimin for use at its New Pit No. 1 and New Pit No. 2 in La Salle County, Illinois.

IT IS FURTHER ORDERED that the orders and findings herein are limited to the determination of temporary electric service and have no precedential bearing on the permanent issue to be litigated herein on the merits; this grant of temporary authority is without prejudice to any issue which may be raised concerning the right of either electric supplier to provide permanent electric service to Unimin at its facilities in La Salle County, Illinois.

By order of the Commission this 21st day of June, 1989.

(SIGNED) MARY B. BUSHNELL

Chairman

(S E A L)